

REMARKS/ARGUMENTS

The rejections presented in the Office Action dated June 1, 2007 (hereinafter Office Action) have been considered. Claims 1-106 remain pending in the application. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Claims 1, 13, 19, 26, 63, 97, and 101 have been amended. Support for the amendments to these claims can be found in the Specification at Page 17, Line 13 through Page 18, Line 17, and Figures 7-10, described therein, among other locations. Accordingly, no new matter has been added.

Claims 1, 2, 5, 6, 11-20, 24-26, 28-32, 63, 67, 70, and 97-106 are rejected based on 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 7,018,391 to Spitz et al. (referred to hereinafter as '391).

To anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (*Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)). Therefore, all claim elements, and their limitations, must be found in the prior art reference to maintain a rejection based on 35 U.S.C. §102. The Applicant respectfully submits that '391 does not teach each and every element of independent claims 1, 19, 63, and 97, and therefore fails to anticipate these claims.

The Applicant's independent claims 1, 19, and 97 each recite, among other features, some variation of an elongated dissecting member having a proximal end and a distal end and configured for blunt tissue dissection. The Applicant's independent claim 63 recites, among other features, means, attached to the distal end of the handle, for bluntly dissecting subcutaneous tissue.

'391 discloses a mechanical cutting device for removing veins. The device includes an elongated member 184 with a cutting element 141. (Col. 8, Lines 18-20; Figs. 1 and 1A). The cutting element 141 includes one or more ports 188 disposed in the outer surface of the elongated member 184. (Col. 8, Lines 36-39; Figs. 1 and 1A). The cutting device operates

by pinching vein tissue between a pair of sharpened cutting edges 188a and 188b of the port 188 of the rotatable member 180 with sharpened edges 178a and 178b of the port 178 of an outer stationary member 170 as the rotatable member 180 and connected inner elongated member 184 are rotated relative to the outer stationary member 173. (Col. 5, Lines 42-47; Col. 8, Lines 41-44; Figs. 1 and 1A). The sliced vein pieces are then drawn from the surgical site through the conduit of the blade assembly by a vacuum source 160 (Col. 7, Lines 1-4; Fig. 1).

The Applicant respectfully submits that '391's disclosure of a mechanical cutting device does not constitute a teaching of an elongated blunt tissue dissection member. For this reason alone, the Applicant respectfully submits that '391 does not teach each and every element and limitation of independent claims 1, 19, 63, and 97.

The Applicant's independent claims 1, 19, and 97 also recite, among other features, an aspiration channel with a port having a longitudinal axis substantially coincident with a longitudinal axis of the distal end of the elongated dissecting member. The Applicant's independent claim 62 recites, among other features, means for aspirating dissected tissue and fluid through a port having a longitudinal axis substantially coincident with a longitudinal axis of a distal end of the blunt tissue dissection means.

Figs. 1, 1A, 4, and 5 of '391 illustrate the port 188 of the cutting element 141. As can be seen, the port 188 does not have a longitudinal axis substantially coincident with a longitudinal axis of a distal end of the outer stationary member 170 or the inner elongated member 184. Rather, the port 188 is positioned at the side of the outer stationary member 170, which is a configuration necessary to pinch vein tissue between the sharpened edges of the outer stationary member 170 and the rotated inner elongated member 184, as discussed above. (See Fig. 5).

Accordingly, the Applicant respectfully submits that '391 does not disclose an aspiration channel with a port having a longitudinal axis substantially coincident with a longitudinal axis of the distal end of the elongated dissecting member. For this further reason, the Applicant respectfully submits that '391 does not teach each and every element

and limitation of independent claims 1, 19, 63 and 97, and therefore cannot anticipate these claims.

Dependent claims 2, 5, 6, 11-18, 20, 24-26, 28-32, 67, 70, and 98-106, which are dependent from independent claims 1, 19, 63, and 97, respectively, were also rejected under 35 U.S.C. §102(e) as being unpatentable over '391. While the Applicant does not acquiesce to the particular rejections to these dependent claims, it is believed that these rejections are now moot in view of the remarks made in connection with independent claims 1, 19, 63, and 97. These dependent claims include all of the limitations of the base claim and any intervening claims, and recite additional features which further distinguish these claims from the cited reference. Therefore, dependent claims 2, 5, 6, 11-18, 20, 24-26, 28-32, 67, 70, and 98-106 are also not anticipated by '391.

For at least these reasons, the Applicant respectfully submits that the rejection of claims 1, 2, 5, 6, 11-20, 24-26, 28-32, 63, 67, 70, and 97-106 as being anticipated by '391 is not sustainable, the withdrawal of which is respectfully requested.

Claims 1, 2, 5, 6, 11-20, 24-26, 28-32, 63, 67, 70, and 97-106 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 7,018,391 to Spitz (referred to hereinafter as '544).

The Applicant's independent claims 1, 19, and 97 each recite, among other features, some variation of an elongated dissecting member having a proximal end and a distal end and configured for blunt tissue dissection. The Applicant's independent claim 63 recites, among other features, means, attached to the distal end of the handle, for bluntly dissecting subcutaneous tissue.

'544 discloses a device for moving within a vein, attaching to the vein, and then tearing out the vein. (Abstract). The device includes an elongated body 102 which is sufficiently flexible to permit navigation within a lumen of a vein (Col. 4, Lines 37-42). Near the distal end of the elongated body 102 is a vein attachment section 110, which can be fastened to the vein. (Col. 5, Line 60 – Col. 6, Line 4). Once fastened, removal of the elongated body 102 causes the vein to peel away as vein branches are torn. (Col. 8, Lines 1-

8). A detachable stripping head 126 can optionally be used to facilitate tearing vein branches as the elongated body 102 is removed. (Col. 8, Lines 17-25; Fig. 4C).

The Applicant respectfully submits that the described procedures of using the flexible elongated body 102 of '544 do not constitute blunt tissue dissection as one of ordinary skill in the art would understand blunt tissue dissection. For this reason alone, the Applicant respectfully submits that '544 does not disclose each and every element and limitation of independent claims 1, 19, 63, and 97, and therefore cannot anticipate these claims.

The Applicant's independent claims 1, 19, and 97 also recite, among other features, an aspiration channel with a port having a longitudinal axis substantially coincident with a longitudinal axis of the distal end of the elongated dissecting member. The Applicant's independent claim 62 recites, among other features, means for aspirating dissected tissue and fluid through a port having a longitudinal axis substantially coincident with a longitudinal axis of a distal end of the blunt tissue dissection means.

'544 discloses a device for moving within a vein, attaching to the vein, and then tearing out the vein. (Abstract). The device includes an elongated body 102 with two lumens, a first lumen 188 for balloon 108 inflation and the second lumen 120 for fluid delivery. (Col. 5, Lines 9-31).

The Applicant respectfully submits that '544 does not disclose an aspiration channel or port. Although a micro pump is disclosed by '544, this pump is only used with the second lumen 120 for fluid delivery. (Col. 5, Lines 59). For this further reason, the Applicant respectfully submits that '544 does not teach each and every element and limitation of independent claims 1, 19, 63, and 97, and therefore cannot anticipate these claims.

Dependent claims 2, 5, 6, 11-18, 20, 24-26, 28-32, 67, 70, and 98-106, which are dependent from independent claims 1, 19, 63, and 97, respectively, were also rejected under 35 U.S.C. §102(b) as being unpatentable over '544. While the Applicant does not acquiesce to the particular rejections to these dependent claims, it is believed that these rejections are now moot in view of the remarks made in connection with independent

claims 1, 19, 63, and 97. These dependent claims include all of the limitations of the base claim and any intervening claims, and recite additional features which further distinguish these claims from the cited reference. Therefore, dependent claims 2, 5, 6, 11-18, 20, 24-26, 28-32, 67, 70, and 98-106 are also not anticipated by '544.

For at least these reasons, the Applicant respectfully submits that the rejection of claims 1, 2, 5, 6, 11-20, 24-26, 28-32, 63, 67, 70, and 97-106 as being anticipated by '544 is not sustainable, the withdrawal of which is respectfully requested.

It is to be understood that the Applicant does not acquiesce to the Examiner's characterization of the asserted art or the Applicant's claimed subject matter, nor of the Examiner's application of the asserted art to the Applicant's claimed subject matter. The Applicant respectfully submits that a detailed discussion of each of the Examiner's rejections beyond that provided above is not necessary, in view of the clear absence of teaching of various features recited in the Applicant's pending claims. The Applicant, however, reserves the right to address in detail the Examiner's characterizations, conclusions, and rejections in the future.

Authorization is given to charge Deposit Account No. 50-3581 (GUID.614PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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Date: August 29, 2007

By:

A handwritten signature in black ink, appearing to read "Paul Sherburne", written over a horizontal line.

Paul Sherburne
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